

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT C. WILSON, et. al,

Plaintiffs,

vs.

Case No. 03-72154

TYCO INTERNATIONAL, LTD., et al,

HON. AVERN COHN

Defendants.

ORDER

This is a breach of contract case arising out of defendants Earth Tech EMS Holdings, Inc. (Earth Tech) and Tyco Acquisition Corp. VII (TAC) purchase of two environmental consulting companies from plaintiffs: IQuES and PRO (collectively referred to as "IQuES/PRO."). On June 3, 2003, plaintiffs, individuals who established IQuES, filed a complaint naming the following defendants:

Tyco International Limited

Tyco International (U.S.) Inc.

TAC

Earth Tech EMS Holdings, Inc.

Plaintiffs make the following claims:

Count I Breach of IQuES Contract

Count II Breach of PRO Contract

Count III Negligent Misrepresentation

Count IV Fraudulent Misrepresentation

Count V Exemplary Damages

Thereafter, defendants filed the following five motions:

1. Motion in Limine to Bar Plaintiffs from Objecting to Earth Tech's Computation of EBIT [Earnings Before Income Tax] and Additional Consideration
2. Motion to Dismiss Counts III and IV
3. Motion for Summary Judgment for Plaintiff's Lack of Proof of Damages
4. Motion to Dismiss Claims Against Tyco International Limited and Tyco International, Inc.
5. Motion in Limine, or in the Alternative, Motion for Partial Summary Judgment as to Counts I and II

Because of the voluminous nature of the papers, the Court directed the parties to file separate statements regarding the nature of the case, the issues in dispute, and defendants' roles and held a status conference with the parties on August 4, 2005.

Based on the parties' statements and the Court's statements at the status conference:

1. Defendants' Motion to Dismiss Claims Against Tyco International Limited and Tyco International, Inc. (docket # 36) is GRANTED. Plaintiffs' claims against these defendants are DISMISSED.
2. Defendants' Motion to Dismiss Counts III and IV (docket # 34) is GRANTED. Counts III and IV, claiming Negligent and Fraudulent Misrepresentation, are DISMISSED.
3. Counts I, II, and V continue. Also, the case continues against Earth Tech and TAC, which are, for all intents and purposes, a single defendant.

4. Defendants' Motions relating to (1) Counts I and II, (2) the computation of EBIT, and (3) plaintiff's proof of damages are pending. The Deputy Clerk will notice them for hearing.

SO ORDERED.

Dated: August 5, 2005

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was sent to counsel of record on this date, August 5, 2005, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160